

# FISCAL NOTE

**Bill #:** SB0320

**Title:** Facilitate establishment of concentrated animal feeding operations

**Primary Sponsor:** Bales, K

**Status:** As Amended in Senate Committee

Sponsor signature

Date

David Ewer, Budget Director

Date

## Fiscal Summary

	<b><u>FY 2006 Difference</u></b>	<b><u>FY 2007 Difference</u></b>
<b>Expenditures:</b>		
General Fund	\$0	\$0
<b>Revenue:</b>		
State Special Revenue	(\$36,000)	(\$45,000)
<b>Net Impact on General Fund Balance:</b>	\$0	\$0

<input type="checkbox"/> Significant Local Gov. Impact	<input checked="" type="checkbox"/> Technical Concerns
<input type="checkbox"/> Included in the Executive Budget	<input checked="" type="checkbox"/> Significant Long-Term Impacts
<input type="checkbox"/> Dedicated Revenue Form Attached	<input type="checkbox"/> Needs to be included in HB 2

## Fiscal Analysis

### ASSUMPTIONS:

#### **Department of Environmental Quality (DEQ)**

1. DEQ is under court order not to utilize the concentrated animal feeding operation (CAFO) general permit until the completion of an environmental impact statement (EIS). The court ruling orders the department to operate under individual permits until an EIS is complete. SB 320 overrides the court ruling; so general permit fees may be utilized.
2. The fees established in SB 320 will take effect in the FY 2006 billing cycle.
3. FY 2006 and FY 2007 permits will be billed and processed as general permits in accordance with the Water Quality Act.
4. The fees in SB 320 are for application fees and renewal fees. SB 320 does not address annual fees, which are currently in rule and 75-5-516, MCA.
5. In FY 2005 there are 94 permitted facilities, the department anticipates an increase to 120 in FY 2006 and to 150 in FY 2007. The annual permit rate is currently \$300 per year. The anticipated reduction in revenue in FY 2006 would be \$36,000 (120 x \$300) and FY 2007 would be \$45,000 (150 x \$300).
6. SB 320 defines the regulated operations as all large and medium-concentrated animal feeding operations.
7. Under current law the department may require small CAFO's to obtain permit coverage. However, under an existing Memorandum of Understanding between DEQ and the Natural Resource Conservation Service

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(NRCS), small CAFO facilities that agree to work to eliminate water quality discharges currently are exempt from permitting. The NRCS provides technical assistance to small CAFO's to eliminate a significant discharge of pollutants from facilities thus removing the CAFO designation. As the definition is silent on small CAFOs, the department assumes that the existing regulatory approach would continue.

8. The department currently conducts compliance inspections at CAFOs. These inspections would continue under SB 320. SB 320 would not result in a reduction in workload for the department. The compliance inspection workload is expected to increase but not due to SB 320.

### FISCAL IMPACT:

	<u>FY 2006 Difference</u>	<u>FY 2007 Difference</u>
<u>Revenues:</u>		
State Special Revenue (02)	(\$36,000)	(\$45,000)
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
State Special Revenue (02)	(\$36,000)	(\$45,000)

### LONG-RANGE IMPACTS:

Section 3(1) provides for application fees and renewal fees. Application fees are for first-time applicants; renewal fees are collected every five years. SB 320 sets these fees in statute at \$450 and \$300, respectively. Under current statute, DEQ is also authorized to collect an annual fee to help cover annual program costs. Since Section 3(1) may preclude collection of annual fees, and since application and renewal fees are fixed in statute, this bill may preclude DEQ from collecting sufficient fees to cover annual program costs.

### TECHNICAL NOTES:

1. SB 320 does not indicate the status of animal feeding operations that are not "concentrated animal feeding operations" because they confine fewer than the threshold number of animals. It does not indicate whether the Department of Environmental Quality has authority to regulate them under the general permit or at all.
2. The definition of "concentrated animal feeding operations" differs from the definition of "concentrated animal feeding operation" in 40 Code of Federal Regulations (C.F.R.) 122.23. The federal rule provides that an animal feeding operation that is not a large or medium CAFO may still be designated as a CAFO if the Environmental Protection Agency or the state regulatory authority determines that it is a significant contributor to state waters.
3. In the definition of "medium concentrated animal feeding operation," it is not clear whether an animal feeding operation must meet criteria in both (a) and (b) to come under the definition because of use of the term "an operation" at the beginning of (b). If it is intended that both (a) and (b) must be met, the quoted language should be deleted.
4. The definitions of "large concentrated animal feeding operations" and "medium concentrated animal feeding operations" in SB 320 differ in certain respects from the definitions of "large concentrated animal feeding operations" and "medium concentrated animal feeding operations" in 40 C.F.R. 122.23. The federal regulations indicate that the term "cattle" in both definitions includes "cow/calf pairs." SB 320 does not contain this language. The federal definition provides that two animal feeding operations under common ownership are considered a single CAFO if they adjoin each other or if they use a common area or system for the disposal of wastes. This is not included in the SB 320. Also, the types of chickens that are counted to classify an AFO as a large CAFO differs between the federal definition and the SB 320 definition.

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5. Section 2(1) requires the Board of Environmental Review to adopt by reference 40 C.F.R. Part 412. Other federal water quality regulations (e.g., 40 C.F.R. 122.23) apply to CAFOs.
6. Section 2(2) provides that the Department must grant general permit authorizations to CAFOs that meet "the federal regulations," but it does not specify which federal regulations are meant. For example, 40 C.F.R. 122.23 provides that land application of manure from a CAFO is subject to a CAFO permit. That regulation also allows the regulatory authority to exempt a large CAFO from the permit requirement if the regulatory authority determines that the large CAFO has no potential to discharge. It is not clear whether these provisions are incorporated into section 2(2).
7. Section 3(1) provides that CAFOs pay set application and renewal fees and that these are "the fees" for CAFO permits and authorizations. Section 75-5-516, MCA, requires that the Board of Environmental Review set discharge permit fees to cover the costs of implementing the permit program. The Board has adopted rules providing for application fees, renewal fees, and annual fees. Section 3(1) may preclude imposition of annual fees that provide DEQ with the funding necessary to administer permits after they are issued or renewed.
8. An order of the First Judicial District requires preparation of a programmatic EIS before DEQ can issue the general CAFO permit. The first sentence in section 3(2) provides that only limited environmental assessments are necessary for operations that qualify for the general permit. The last sentence in 3(2) provides that a programmatic EIS is not required for permitting conducted under section (2), which authorizes CAFO permitting under both general and individual permits. Presumably these two provisions, which deal with CAFOs specifically, would prevail over the general EIS requirement in 75-1-201, MCA, and would overturn the court decision regarding the programmatic EIS for the CAFO general permit.